

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

JOEY SCOTT LUMAN

Appellant

v.

ITS TECHNOLOGIES & LOGISTICS, LLC

Respondent

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DOCKET NUMBER **WD72010**

DATE: September 28, 2010

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Appeal From:

Circuit Court of Cass County, MO  
The Honorable Jacqueline Annette Cook, Judge

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Appellate Judges:

Division Three: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

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Attorneys:

John M. Cronan, Overland Park, KS

Counsel for Appellant

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Attorneys:

David R. Schlee, Kansas City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

JOEY SCOTT LUMAN, Appellant, v. ITS  
TECHNOLOGIES & LOGISTICS, LLC, Respondent

WD72010

Cass County

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton, and Gary D. Witt, JJ.

ITS Technologies & Logistics, LLC provides switching, terminal, and maintenance services at Richards-Gebaur through a contractual relationship with KC Southern. Mr. Joey Scott Luman worked for ITS. In 2008, Mr. Luman was operating a switch engine at Richards-Gebaur when a train operated by KC Southern employees struck the engine. Mr. Luman brought suit against ITS and KC Southern under the Federal Employer's Liability Act (FELA) and subsequently settled with KC Southern. ITS moved for summary judgment, or in the alternative to dismiss Mr. Luman's FELA claim, contending that Missouri Workers' Compensation Law provided Mr. Luman's exclusive remedy. The trial court determined that FELA was inapplicable and granted ITS's motion to dismiss. Mr. Luman appeals.

**REVERSED AND REMANDED.**

**Division Three holds:**

On appeal, Mr. Luman contends the trial court erred because his claims were properly brought under FELA. FELA does not apply to all railroad enterprises: it specifically provides liability for "common carrier[s] by railroad engaged in interstate commerce." It was not disputed that KC Southern was such a common carrier. Mr. Luman argues ITS was a common carrier through its relationship with KC Southern.

Mr. Luman relies on *Lone Star Steel Co. v. McGee*, 380 F. 2d 640, 643 (5th Cir. 1967), which set forth factors the court believed were of prime importance in determining if an entity was a common carrier under FELA through its relationship with a common carrier by railroad in interstate commerce. The trial court, while acknowledging the factors cited in *Lone Star*, concluded ITS was not a common carrier because: (1) ITS was KC Southern's independent contractor; (2) ITS only performed switching on tracks located at Richards-Gebaur; (3) ITS did not move railcars across state lines; and (4) KC Southern and ITS did not have financial interests in each other. We do not find these factors conclusive. The fact that a company conducts railroad operations, not as an integral part of a single railroad system, but wholly as an agent for one or several, does not exempt it from the status of common carrier. Rather, whether an entity is a common carrier depends upon what it does. Where the work performed by a contractor is essential to the railroad's operations as a common carrier, the contractor falls within FELA.

Here ITS performed essential aspects of KC Southern's operation as a common carrier by unloading freight and automobiles from incoming railcars, reloading railcars, making up outbound trains as part of KC Southern's service to its customers, in addition to providing maintenance and administrative services. The relationship between ITS and KC Southern shows

a case of actively managing and uniting the railroad and its contractor into an organized system. Because ITS performed a necessary part of KC Southern's total rail operation and undertook obligations of KC Southern's as a common carrier, Mr. Luman's suit was properly brought under FELA. Mr. Luman's point is granted.

We reverse and remand for proceedings consistent with this opinion.

**Opinion by: Thomas H. Newton, Judge**

September 28, 2010

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